

IOWA DEPARTMENT OF PUBLIC HEALTH
BUREAU OF RADIOLOGICAL HEALTH
LUCAS STATE OFFICE BUILDING
DES MOINES, IOWA 50319

May 2012

IDPH INFORMATION NOTICE 12-01: UNAUTHORIZED TRANSFER OF OWNERSHIP
OR CONTROL OF LICENSED ACTIVITIES

Addressees

All Specific Radioactive Material Licensees

Purpose

IDPH is issuing this information notice to provide guidance concerning the information to be submitted to IDPH prior to a change of ownership or control of licensed material/activities. It is expected that recipients will review this notice, distribute it to responsible staff, and consider actions as appropriate to ensure compliance with IDPH requirements concerning the transfer of control of licensed activities. **A written response to this information notice is required by July 1, 2012 as stated in the attached memorandum.**

Background

This information notice was originally issued in 1995 to inform licensees of their responsibility to provide timely notification to IDPH before the planned transfer of ownership or control of licensed activities and obtain prior written consent to such action from IDPH, as specified in Iowa Radiation and Radioactive Materials rules. Specific guidance was also provided outlining the information to be submitted by licensees concerning changes of ownership or control resulting from mergers, buy-outs, or major stock transfers.

Discussions

Iowa Administrative Code (IAC) 641-39.4(32)“b” states that “no license issued or granted under this chapter and no right to possess or utilize radioactive material granted by any license issued pursuant to this chapter shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the agency shall, after securing full information, find that the transfer is in accordance with the provisions of the Iowa Code, now or hereafter in effect, and to all valid rules, regulations, and orders of the agency, and shall give its consent in writing”. Thus, the regulations are very clear that control of licenses cannot be transferred without prior written permission from the IDPH.

It is not IDPH’s intent to interfere with the business decisions of licensees; however, it is required that licensees provide timely notification to IDPH whenever such decisions could involve changes in the corporate structure responsible for management oversight, control, or radiological safety of licensed material. Full information on changes of ownership or control of licensed activities should be submitted to the IDPH, 90 days prior to the proposed action. The purpose of such notification is to allow IDPH to review that: (1) radioactive materials are possessed, used, owned, or controlled only by persons who have valid IDPH licenses; (2) materials are properly handled and secured; (3) persons using such materials are capable, competent, and committed to implement appropriate radiological controls; (4) licensees provide adequate financial assurance for compliance with IDPH requirements; and (5) public health and

safety are not compromised by the use of such materials. Although the burden of notification is on the existing licensee, it may still be necessary for the transferee to provide supporting information or to independently coordinate the change in ownership or control with IDPH.

IDPH licensees planning to transfer ownership, to change the corporate status, or to change control of licensed activities are required to provide sufficient prior notice and full information about the change to IDPH and to obtain written consent from the IDPH before the transfer. Failure to comply with this requirement may adversely affect public health and safety and interfere with IDPH's ability to inspect licensed activities. Cases where change of ownership or control has occurred without prior written consent from IDPH will be treated as noncompliance with the provisions of IAC 641-39.4(32)"b". The failure to receive required IDPH approval prior to a change of ownership or control of licensed activities is considered to be a Severity Level III violation and may warrant escalated enforcement action, to include civil penalties and orders, if indicated by the circumstances, against one or both of the parties involved.

Licensees should note that a license cannot be sold or transferred by itself to a transferee. In situations where a licensed company is purchased in its entirety and the transferor will not continue in business as a separate entity, the purchase can be approved if the license is amended to reflect any changes, or any other change that would normally require an amendment. If there are no changes, an amendment may not be necessary and the transferee and transferor will be notified by letter that IDPH has no objection to the sale, based on written statements from the transferee/transferor confirming that no changes in the licensed operation will occur as a result of the sale.

In cases where a licensed operation is purchased from a transferor, who continues in business as a separate entity (without the license), the transferee must submit an application for an amendment to the license to reflect the change in identity of the licensee, compliance with financial assurance requirements, and any other pertinent changes in the operation. The transferee can use the transferor's file documents as a basis for preparing the license amendment application. Usually a new license will not be issued. However, the transferee can always apply for a new license by providing a complete application. If a new license is issued, the transferor may request termination of its license as a separate action.

In order to maintain their availability, records important to the safe and effective decommissioning of the facility and all records concerning public dose and waste disposal need to be transferred to the new licensee or to IDPH in cases of termination. Therefore, no transfers or changes of ownership or license termination's will be authorized until all information or records concerning decommissioning of the facility, radiation doses to the public and waste disposal, such as released to sewers, incineration, radioactive spills, and on-site burials, have been transferred to the new licensee, if licensed activities will continue at the same location, or to IDPH for license terminations.

Melanie Rasmusson, Chief
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INFORMATION NEEDED FOR CHANGE OF OWNERSHIP APPLICATION

The applicant shall provide the following information concerning changes of ownership or control by the applicant (transferor and/or transferee, as appropriate):

1. The new name of the licensed organization. If there is no change, the license should so state.
2. The new licensee contact, telephone number(s), and email address to facilitate communications.
3. Any changes in personnel having control over licensed activities (e.g., officers of a corporation) and any changes in personnel named in the license such as radiation safety officer, authorized users, or any other persons identified in previous license applications as responsible for radiation safety or use of licensed material. The applicant should include information concerning the qualifications, training and responsibilities of new individuals.
4. An indication of whether the transferor will remain in non-licensed business activities without the license.
5. A complete, clear description of the transaction, including any transfer of stocks or assets, mergers, etc., so that legal counsel is able, when necessary, to differentiate between name changes and changes of ownership.
6. A complete description of any planned changes in organization, location, facility, equipment, or procedures (i.e., changes in operating or emergency procedures).
7. A detailed description of any changes in the use, possession, location or storage of the licensed materials.
8. Any changes in organization, location, facilities, equipment, procedures, or personnel that would require a license amendment even without the change of ownership.
9. An indication of whether all surveillance items and records (e.g., calibrations, leak tests, surveys, inventories, and accountability requirements) will be current at the time of transfer. A description of the status of all surveillance requirements and records should also be provided.
10. Confirmation that all records concerning the safe and effective decommissioning of the facility, pursuant to IAC 641-39.4(26); public dose; and waste disposal by release to sewers, incineration, radioactive material spill, and on-site burials, have been transferred to the new license, if licensed activities will continue at the same location, or to the IDPH for license terminations.

11. A description of the status of the facility. Specifically, the presence or absence of contamination should be documented. If contamination is present, will decontamination occur prior to transfer? If not, does the successor company agree to assume full liability for the decontamination of the facility or site?
12. A description of any decontamination plans, including financial assurance arrangements of the transferee, as specified in IAC 641-39.4(26). This should include information about how the transferee and transferor propose to divide the transferor's assets, and responsibility for any cleanup needed at the time of transfer.
13. Confirmation that the transferee agrees to abide by all commitments and representations previously made to IDPH by the transferor. These include, but are not limited to: maintaining decommissioning records required by IAC 641-39.4(26); implementing decontamination activities and decommissioning of the site; and completing corrective actions for opening inspection items and enforcement actions.

With regard to contamination of facilities and equipment, the transferee should confirm, in writing, that it accepts full liability for the site, and should provide evidence of adequate resources to fund decommissioning; or the transferor should provide a commitment to decontaminate the facility before change of control or ownership.

With regard to open inspection items and enforcement actions, the transferee should confirm, in writing, that it accepts full responsibility for open inspection items and/or any resulting enforcement actions; or the transferee proposes alternate measures for meeting the requirements; or the transferor provides a commitment to close out all such actions with IDPH before license transfer.

14. Documentation that the transferor and transferee agree to the change in ownership or control of the licensed material and activity, and the conditions of transfer; and the transferee is made aware of all open inspection items and its responsibility for possible resulting enforcement actions.
15. A commitment by the transferee to abide by all constraints, conditions, requirements, representations, and commitments identified in the existing license. If not, the transferee must provide a description of its program, to ensure compliance with the license and IDPH regulations.

39.4(32) *Specific terms and conditions of licenses.*

b. No license issued or granted under this chapter and no right to possess or utilize radioactive material granted by any license issued pursuant to this chapter shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the agency shall, after securing full information, find that the transfer is in accordance with the provisions of the Iowa Code, now or hereafter in effect, and to all valid rules, regulations, and orders of the agency, and shall give its consent in writing.

MEMORANDUM

DATE: May 25, 2012
TO: All Specific Radioactive Material Licensees
FROM: Iowa Department of Public Health; Bureau of Radiological Health
RE: IDPH Information Notice 12-01: Unauthorized Transfer of Ownership or Control of Licensed Activities

Due to recent issues concerning unauthorized transfer of ownership or control of licensed activities; this office has deemed it necessary to require that all specific radioactive material licensees acknowledge receipt and understanding of IDPH Information notice 12-01. Please complete the bottom portion of this memo and return it to this office no later than July 1, 2012.

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|---|--|
| License number | |
| Company name | |
| Location | |
| City, State, Zip | |
| Mailing address (if different from above) | |
| City, State, Zip | |
| Contact name, phone number | |
| RSO name, phone number | |
| Email address | |

I, the undersigned, acknowledge receipt and understanding of IDPH Information Notice 12-01: Unauthorized Transfer of Ownership or Control of Licensed Activities.

Signature

Date